Supreme Court, U.S.
FILED

(1)

021078 JAN 15 2003
No. ___
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFERS, DEMONSTRATORS, and HELPERS LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and TRANSPORT SUPPORT, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

JAMES F. WALLINGTON *
BAPTISTE & WILDER, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 200365
(202) 223-0723

* Counsel of Record

Attorney for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

60

48 pp

QUESTIONS PRESENTED FOR REVIEW

What is the standard to be applied by district courts upon application for injunctive relief by an Employer engaged in interstate commerce against a Labor Organization representing its employees under a collective bargaining agreement enforceable under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, where the Labor Organization is engaging in area standards picketing protected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, directed at a separate Employer at a common site, and where the signatory Employer asserts that the provisions of Section 4 of the Norris-La Guardia Act, 29 U.S.C. § 104, which withdraw jurisdiction of the courts of the United States for the issuance of any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute, do not apply under the exception established by this Court's opinion in *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970).

Where a preliminary injunction order issued by a district court is presented to a jury on trial for damages for breach of a collective bargaining agreement, is the issue of the propriety of the preliminary injunction under Section 4 of the Norris-La Guardia Act, 29 U.S.C. § 104, moot if no pretrial appellate review has been undertaken and the Employer, subsequent to the jury award, closes its operations which were subject to the preliminary injunction.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to this proceeding are the Petitioners Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers Local Union No. 604, a labor organization headquarted in St. Louis, Missouri affiliated with the International Brotherhood of Teamsters, AFL-CIO and the Respondents Allied Systems, Ltd., a Georgia limited partnership, and Transport Support, Inc., a Delaware corporation, each being a wholly-owned subsidiary of Allied Holding, Inc., a publically held corporation (trading symbol "AHI").

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING PETITION	4
I. THE DISTRICT COURT LACKED JURISDICTION TO ISSUE THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING THE DECEMBER AREA STANDARDS PICKETING BY LOCAL 604	4
II. THE PROPRIETY OF THE DECEMBER 1999 RESTRAINING ORDER AND PRELIMINARY INJUNCTION IS NOT MOOT WHERE SUCH DECISIONS WERE PRESENTED TO THE JURY ON TRIAL FOR DAMAGES	11
CONCLUSION	12
APPENDICES	
Appendix A—Decided, October 17, 2002	1a
Appendix B—Filed, September 17, 2002	2a
Appendix C—Temporary Injunction, filed 12/29/99	13a

TABLE OF CONTENTS—Continued

	Page
Appendix D—Memorandum & Order, filed 12/29/99	15a
Appendix E—29 U.S.C. § 104	24a
Appendix F—29 U.S.C. § 157	26a
Appendix G—29 U.S.C. § 185	27a

TABLE OF AUTHORITIES

CASES — Page

12th & L Ltd. Partnership v. Operating Engineers Local 99, 369 F. Supp 1174 (D.D.C. 1975) 6

Allied Concrete, Inc. v. NLRB, 607 F.2d 827 (9th Cir. 1979) 9

Allied Systems, LTD. v. Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm., Local 327, 179 F.3d 982 (6th Cir. 1999), *cert. denied*, 528 U.S. 965 (2000) 1, 5, 6

Boys Markets v. Retail Clerks Union, 398 U.S. 235 (1970) 4, 5, 6

Buffalo Forge Co. v. Steelworkers, 428 U.S. 397 (1976) 5

Chicago Dist. Council of Carpenters Pension Fund v. K&I Construction, Inc., 270 F.3d 1060 (7th Cir. 2001) 6

Constar, Inc. v. Plumbers Local 447, 568 F. Supp. 1440 (E.D. Cal. 1983), *aff'd* 748 F.2d 520 (9th Cir. 1984) 9

Int'l Union United Auto. Workers v. Lester Eng'g Co., 718 F.2d 818 (6th Cir. 1983) 6

Jacksonville Bulk Terminals v. Int'l Longshoremen's Assoc., 457 U.S. 702 (1982) 5

Lebanon Chemical Corp v. United Farmers Plant Foods, Inc., 179 F.3d 1095 (8th Cir 1999) 11

Local Union No. 884 v. Bridgestone/Firestone, Inc., 61 F.3d 1347 (8th Cir. 1995) 10

Mautz & Oren, Inc. v. Teamsters, Chauffeurs, and Helpers Union, Local No. 279, 882 F.2d 1117 (7th Cir. 1989) 7, 8

TABLE OF AUTHORITIES—Continued

	Page
National Rejectors Industries v. United Steelworkers of America, 562 F.2d 1069 (8th Cir. 1977)	5
O'Neil's Markets v. Unite Food and Commercial Workers Union, 95 F.3d 733 n.1 (8th Cir. 1996)	6
Sailors' Union of the Pacific (Moore Dry Dock), 92 N.L.R.B. 547 (1950)	7
STATUTES	
29 U.S.C. § 104	i, 4
29 U.S.C. § 157	i, 6
29 U.S.C. § 185	i, 4

IN THE

Supreme Court of the United States

No. ___

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFERS, DEMONSTRATORS, and HELPERS LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and TRANSPORT SUPPORT, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioners Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers Local Union No. 604, a labor organization headquartered in St. Louis, Missouri a and affiliated with the International Brotherhood of Teamsters, AFL-CIO, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision sought to be reviewed has been reported as *Allied Systems, Ltd. v. Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers*, Local 604, 304 F. 3d 785 (8th Cir. 2002) and is reprinted in the appendix hereto

at pages 2a through 12a. The order of the Court of Appeals denying the petition for rehearing to the panel was entered October 17, 2002, and is reprinted in the appendix at page 1a.

JURISDICTION

The Court of Appeals entered its judgment on September 17, 2002. Teamsters Local 604 filed a timely petition for rehearing on September 2002, which was denied on October 17, 2002. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Appellants Teamsters Automobile Transport Chauffeurs, Demonstrators, and Helpers Local Union No. 604 and its officers, John Thyer and Terry Manion, presented this appeal on June 14, 2001 from a jury verdict entered on February 16, 2001 in the United States District Court for the Eastern District of Missouri. The verdict awarded to Appellees Allied Systems, Inc. and Transport Support, Inc. the sum of $81,000.00 for breach of contract between the parties.

On October 8, 1999, Allied Systems, Ltd. and its subsidiary corporation, Transport Support, Inc., filed a complaint against Teamsters Local 604 and its officers alleging a breach of contract and seeking temporary restraining order and preliminary injunction. At a hearing conducted on October 8, 1999 before U.S. District Judge E. Richard Webber on Allied's motion for temporary restraining order, the parties agreed to a settlement which mooted both motions. Allied continued to pursue the October 8, 1999 complaint on a general allegation of breach of contract damages. On October 27, 1999, Teamsters Local 604 and its officers filed an Answer. A scheduling order pursuant to Rule 16, F.R. Civ. P., and a case management order were entered on November 16, 1999 and December 9, 1999, respectively.

On December 23, 1999, Allied filed an amended complaint with an additional request for injunctive relief. On December 23, 1999, U.S. District Judge E. Richard Webber conducted a hearing on a new motion for temporary restraining order enjoining picketing by Teamsters Local 604 and requiring arbitration of "any and all disputes which are causing the present work stoppage." On December 29, 1999, the preliminary injunction was entered.

On June 27, 2000, the District Court entered a memorandum and order granting Allied leave to file a Second Amended Complaint which alleged damages arising from work stoppages in October, 1999 and December, 1999. The parties engaged in pretrial discovery and filed various pretrial evidentiary motions between June 27, 2000 and February 8, 2001.

On February 8, 2001, U.S. District Judge E. Richard Webber issued a memorandum and order on various pretrial motions *in limine* raised by the parties. Between February 12, 2001 and February 16, 2001, a jury trial was conducted upon Allied's breach of contract damages claims. Teamsters Local 604 moved for directed verdict at close of Allied's case on February 14, 2001, and such motion was denied. Jury instructions were argued and presented on February 15, 2001 and the jury rendered a verdict against Teamsters Local 604 in the amount of $81,000.00 on February 16, 2001. The jury's verdict was entered as judgment by the Court on February 16, 2001.

On February 26, 2001, Teamsters Local 604 moved for a new trial. After various post trial motions, the Honorable E. Richard Webber entered the final Judgment and Order in this case on May 16, 2001. Teamsters Local 604 and its officers filed the Notice of Appeal on June 14, 2001.

REASONS FOR GRANTING PETITION

I. THE DISTRICT COURT LACKED JURISDICTION TO ISSUE THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING THE DECEMBER AREA STANDARDS PICKETING BY LOCAL 604.

Federal courts are affirmatively deprived of their equitable powers to enjoin labor disputes, such as the area standards picketing instituted by Local 604 in December 1999, by Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104. Section 4 specifically provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts.
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment.

Clearly, Allied's contention that the December area standards picketing violated the no-strike clause contained in Article 7 of the NMATA constitutes a labor dispute between Allied and Local 604. *See* 29 U.S.C. § 113(c). Thus, in order to be held valid the December 29, 1999 injunction must be found to comply with the "narrow exception" to the Norris-LaGuardia Act's comprehensive anti-injunction provisions recognized by the Supreme Court in *Boys Markets v. Retail Clerks*, 398 U.S. 235 (1970). In *Boys Markets*, the Supreme Court explained that in a case brought under § 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. 185(a), to enforce a no-strike provision of a collective bargaining agreement when a Union has struck or threatened to strike over an arbitable dispute, "Norris LaGuardia's policy

of nonintervention by the federal courts should yield to the overriding interest in the successful implementation of the arbitration process." *Id.* at 252.

In the instant case, the district court's temporary retaining order and preliminary injunction certainly do not fit into this "narrow exception." In fact, "[c]ases decide since *Boys Markets* have made it clear that an injunction is appropriate only when such relief is necessary to compel specific performance of the mandatory arbitration provisions of the contract," and "[i]t is essential in each case that the activity being enjoined represents a union response to dispute over a grievance which the union was contractually bound to arbitrate." *National Rejectors Industries v. United Steelworkers of America*, 562 F.2d 1069, 1075 (8th Cir. 1977). *See also Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397, 409-11 (1976) (holding that an injunction may not issue when the question is whether the strike breaches the no-strike provisions of the collective bargaining agreement rather than whether the dispute underlying the strike is arbitrable); and *Jacksonville Bulk Terminals v. Int'l Longshoremen's Assoc.*, 457 U.S. 702, 722 (1982) (holding that because the underlying dispute causing the work stoppage was not arbitrable the Norris-LaGuardia Act prohibited the issuance of injunctive relief pending the arbitrator's ruling on the legality of the strike under the collective bargaining agreement).

The *Boys Markets* exception to Norris-LaGuardia's proscription against issuing injunctions in labor disputes was discussed extensively in *Allied Systems, LTD. v. Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm., Local 327*, 179 F.3d 982 (6th Cir. 1999), *cert. denied*, 528 U.S. 965 (2000), a case involving a dispute between the instant Appellees and another local union under the NMATA. In that case, the Court of Appeals for the Sixth Circuit affirmed the district court's denial of injunctive relief sought by Allied stating that before an injunction could be proper under the interplay

between the Norris-LaGuardia Act and § 301(a) of the LMRA, "the court must find that the dispute underlying the controversy is subject to binding arbitration under the terms of the collective bargaining agreement." *Id.* at 987 (*quoting Int'l Union United Auto. Workers v. Lester Eng'g Co.*, 718 F.2d 818, 822 (6th Cir. 1983)). There, as here, the union presented a colorable claim that the underlying dispute was not subject to the grievance and arbitration provisions of Article 7 of the NMATA, and, therefore, the court was without jurisdiction to issue an injunction. *Id.* at 990.

Nevertheless, there is a split in the Circuits over what legal standard a court considering a *Boys Market* injunction should apply. *Compare Allied Systems*, 179 F.3d 982 *with Chicago Dist. Council of Carpenters pension Fund v. K&I Construction Inc.*, 270 F.3d 1060, 1066 (7th Cir. 2001).

In light of the Norris-LaGuardia Act's limitation of the jurisdiction of district courts to issue injunctions in labor disputes, the inquiry on review into the jurisdiction of the district court to issue the instant injunction is a legal one.

Area standards picketing allows a union "to protect the employment standards it has negotiated in a particular geographic area from the unfair competitive advantage that would be enjoyed by an employer whose labor cost package was less than those of other employers subjected to the are contract standards." *O'Neil's Markets v. United Food and Commercial Workers Union*, 95 F.3d 733, 736 n.1 (8th Cir. 1996) (citation omitted). Peaceful area standards picketing is a protected activity by Section 7 of the LMRA, 29 U.S.C. § 157. *Id.* at 737. Moreover, a "no-strike" clause does not prevent economic action against a non-party to a collective bargaining agreement. *See, e.g., 12th & L Ltd. Partnership v. Operating Engineers Local 99*, 369 F. Supp 1174, 1178 (D.D.C. 1975).

It was the Allied's contention, however, that the area standards picketing undertaken by Local 604 was not a primary picket against Auto Auction, but rather a secondary picket directed against Allied, and thus a violation of the no-strike clause. This argument requires a determination of Local 604's motivation in establishing the December picket line. Fortunately, the NLRB has developed and courts have adopted an "evidentiary framework in which to evaluate claims of illegal secondary motivation in common situs cases," such as this one.[1] *Mautz & Oren, Inc. v. Teamsters, Chauffeurs, and Helpers Union, Local No. 279*, 882 F.2d 1117, 1121 (7th Cir. 1989). The union's picketing is presumed to be primary if the following standards, known as the *Moore Dry Dock* standards, are met:

> (1) The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (2) at the time of the picketing the primary employer is engaged in its normal business at the situs; (3) the picketing is limited to places reasonably close to the location of the situs; and (4) the picketing discloses clearly that the dispute is with the primary employer.

Sailors' Union of the Pacific (Moore Dry Dock), 92 N.L.R.B. 547, 549 (1950).

The evidence reveals that Local 604's December area standards picketing plainly conformed to the preceding standards and should have enjoyed the presumption of primary picketing status. First, it is undisputed that Local 604 did not begin picketing the rail yard until Mr. Bledsoe telephoned Mr. Thyer and informed him that Auto Auction was at the rail yard. The uncontradicted testimony of the Local 604

---

[1] Common situs cases involve those where the union is picketing against a primary employer, in this case St. Louis Auto Auction, at a location where other neutral employers are also performing work, such as Allied.

President Terry Manion further established that the pickets only remained in place at such times as he determined Auto Auction was on the premises. There can be no doubt that the first of the *Moore Dry Dock* standards was satisfied.

Second, the primary employer, Auto Auction, was engaged in its normal business at the rail yard. Auto Auction is a wholesale automobile distributor that sells used cars to dealerships in the St. Louis area. Necessarily, one aspect of Auto Auction's business must be to get the cars from external locations to its main facility. The second *Moore Dry Dock* standard is thus satisfied.

The third *Moore Dry Dock* standard is also satisfied. It was undisputed that Mr. Manion set up the picket on the morning of December 21, 1999 where the rail road told him to, an at this time there was only one gate being used by both Auto Auction and Allied employees. Allied contends, however, that it established a reserve gate system on December 22 and that because Local 604 did not move its picket their underlying motivation must have been to disrupt Allied's business.

Where primary and neutral employees enter an leave a work site through a common gate "[t]he union is entitled to picket the common entrance." *Mautz & Oren*, 882 F.2d at 1122. Neutral employers may, however, set up reserve gates to create separate entrances for the primary employer and other neutral employers to minimize the disruption caused by the picketing of the primary employer. *Id.* Nevertheless, Allied's reserve gate signs were improper because they did not establish one gate for Auto Auction, the primary employer, and another gate for all other neutral employers. Instead, they attempted to create a reserve gate for the primary target of the picketing, Auto Auction, along with all other neutral employers who were to enter the rail yard. A valid the reserved gate system must put the union on notice regarding the area where it can effectively restrict its appeal

to the primary employer and public without enmeshing neutrals in its dispute. *See, e.g., Allied Concrete, Inc. v. NLRB*, 607 F.2d 827, 831 (9th Cir. 1979). The gate signs posted by Allied did not isolate the primary target of the picketing, Auto Auction, and thus were not valid.

Furthermore, the posting of these signs was not communicated to Local 604. It is simply common sense that in order to be valid and effective the neutral employer "must, in some fashion, give notice to the union of the existence of the reserve gate system." *Constar, Inc. v. Plumbers Local 447*, 568 F. Supp. 1440, 1448-9 (E.D. Cal. 1983), *aff'd* 748 F.2d 520 (9th Cir. 1984). Indeed, the signs were not even posted until December 23, the last day of the picketing. Before that time, Allied only had placed small paper signs at the gates on December 22.

Alternatively, even if the reserve gate was proper and Auto Auction used the second gate after December 23, 1999, the site of the picketing was reasonably close to the second gate that the third *Moore Dry Dock* standard was still satisfied. As shown by the diagram of the rail yard, which the parties agreed was an accurate depiction, the location of the picketing was reasonably close reasonably close to the reserve gate. This location was the only the site that the rail road allowed Local 604 to picket, and neither Allied nor the rail road ever asked Local 604 to move the pickets to a different site.

The last *Moore Dry Dock* standard is plainly satisfied because the picket signs all identified Auto Auction as the sole and primary target of the picketing. Consequently, Local 604 having satisfied all of the *Moore Dry Docks* standards should have enjoyed the presumption that its picketing was primary and directed at Auto Auction rather than Allied. Furthermore, both Mr. Thyer and Mr. Manion testified that they never told any employee not to cross the area standards picket line. Allied's drivers also testified that the Union did not instructed them to refrain from working.

The district court's determination to issue the injunction was plainly an abuse of its discretion as it relied upon an erroneous legal premise that the Norris LaGuardia Act did not apply in this situation. In addition, it is clear that the court improperly placed the burden on Local 604 to show why an injunction should not issue rather than upon Allied, who rightfully should have borne the burden of proving that it should issue. *See, e.g., Local Union No. 884 v. Bridgestone/Firestone, Inc.*, 61 F.3d 1347, 1351 (8th Cir. 1995) ("The party moving for a preliminary injunction bears the burden of proving that it should issue.").

The error committed by the district court in issuing the restraining order and preliminary injunction was subsequently compounded when excerpts from each were read to the jury. The ultimate issue of whether Local 604 violated the no-strike clause of the CBA in regard to the December picketing was not left to the determination of the jury. Rather, the jury was informed that the district court had already determined that issue when the following sentence from the December 23, 1999 Restraining Order and Order to Show Cause was read to them: "Defendants and defendant Local Union No. 604 members have engaged in a work stoppage and tie-up of equipment in violation of a no-strike clause contained in an agreement between Plaintiffs and Defendant Union."

First, the district court committed clear legal error by issuing the restraining order and preliminary injunction against Local 604 without the jurisdiction to do so. Then the district court's findings, which as demonstrated above were clearly erroneous and against the weight of the evidence, were communicated to the jury with the totality of the resulting error being so prejudicial that only a new trial can cure the error.

II. THE PROPRIETY OF THE DECEMBER 1999 RESTRAINING ORDER AND PRELIMINARY INJUNCTION IS NOT MOOT WHERE SUCH DECISIONS WERE PRESENTED TO THE JURY ON TRIAL FOR DAMAGES.

The propriety of the district court's December 1999 restraining order and preliminary injunction is not a moot issue, as found by the Court of Appeals, because their introduction into evidence and subsequent reading to the jury substantially prejudiced the rights of Local 604 and seriously affected the fairness of the trial. While Local 604 does not contest that the conduct enjoined by preliminary injunction may be moot, this does not moot the appeal of the issue of whether the district court had jurisdiction to issue it in the first instance since allowing it to be read to the jury substantially prejudiced the rights of the Petitioner. Indeed, when the district court's preliminary injunction order finding that Local had breached the no-strike clause of the party's collective bargaining agreement was read to the jury, the ultimate issue in the case—whether or not Local 604 had in fact breached the no-strike clause—was taken out of the hands of the jury to decide and essentially predetermined by the district court. Since the district court was without jurisdiction to issue the preliminary injunction, then the reading of the injunction order to the jury concluding that Local 604 had breached the no strike clause of the party's collective bargaining agreement must be reversible error.

While the case relied upon by the Eighth Circuit in declining to review the propriety of the preliminary injunction at issue, *Lebanon Chemical Corp v. United Farmers Plant Foods, Inc.*, 179 F.3d 1095 (8th Cir 1999), does decline to review a preliminary injunction after the issue became moot, the Court of Appeals in *Lebanon* specifically qualified its holding by stating, "There is nothing that this court could now do to remedy the effects of the injunction even if it were

improvidently granted." That is not the case here. In the instant situation, the improvidently granted injunction was allowed into evidence at the trial on the merits and, therefore, was allowed to improperly influence the jury's verdict, thus substituting the district court's preliminary findings for the jury's own verdict. After the district court's order finding Local 604 in breach of its contractual obligations was read into evidence, there was nothing left for the jury to decide. Here, unlike in *Lebanon Chemical*, this Court has the opportunity to remedy the effects of the district court's error by granting Local 604 a new trial that has not been unjustly tainted by the introduction into evidence of an improper preliminary injunction order.

CONCLUSION

Due to the differing interpretations in the Circuit Courts over what legal standard a court considering a *Boys Market* injunction should apply, we request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

JAMES F. WALLINGTON *
BAPTISTE & WILDER, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 200365
(202) 223-0723
Attorney for Petitioner

* Counsel of Record

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

October 17, 2002, Decided

PINION:

ne petition for rehearing by the panel filed by appellants has
een considered by the court and is denied.

October 17, 2002

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Filed September 17, 2002]

Nos. 01-2538/2629

ALLIED SYS. v. TEAMSTERS AUTO. TRANSP. CHAUFFEURS, DEMONSTRATORS & HELPERS, Local 604

Before BOWMAN, RILEY, and MELLOY, Circuit Judges.

OPINION:

RILEY, *Circuit Judge.*

Appellants, Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers, Local 604, Terry Manion (Manion), and John Thyer (Thyer) (collectively, Local 604), appeal a jury verdict in favor of Allied Systems, Ltd. (Allied) and Transport Support, Inc. (TSI) (collectively, Allied-TSI). Allied-TSI operates automobile transportation businesses throughout the United States and Canada. Local 604 is the recognized exclusive representative for Allied-TSI's employees at the Wentzville, Missouri, terminal. Allied-TSI sued Local 604 for breach of the collective bargaining agreement governing the relationship between the parties. The district court granted temporary then preliminary injunctive [3] relief prohibiting Local 604 from conducting a picket line at Allied-TSI's in-bound rail yard main gate, finding the picketing was a disguise for grievances subject to arbitration under the parties' agreement and was effectively a work stoppage. A jury thereafter awarded Allied-TSI $81,000 in damages.

Local 604 appeals the district court's grant of injunctive relief to Allied-TSI before trial, the admission and exclusion of evidence at trial, and the failure to reduce the damage award. Allied-TSI cross-appeals, arguing the district court erred in not awarding attorney fees. We affirm the district court in all respects.

I. BACKGROUND

The parties conducted business at the terminal of the General Motors (GM) plant in Wentzville, until December 1999 when GM transferred Allied-TSI's work at the terminal to another carrier. At the time of suit, TSI performed releasing and yard functions at numerous GM plants including the Wentzville plant. Allied is a motor carrier service company that delivers new and used automobiles by truck around the United States and Canada. Allied and TSI are wholly owned by Allied Automotive Group. Local 604 is affiliated with the International Brotherhood of Teamsters (IBT). Thyer and Manion, respectively, were the Secretary-Treasurer and President of Local 604.

Local 604 and Allied-TSI are signatories to the National Master Automobile Transporters Agreement (NMATA) which contains a mandatory arbitration clause and requires arbitration of labor disputes before unions engage in work stoppages or strikes. The NMATA provides in Article 7, Section 1:

> The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination.
>
> The Unions and the Employers agree there shall be no strike, tie-up of equipment, slowdown or walkout on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible

means of a settlement, as provided for in this Agreement, of any controversy which might arise.

The NMATA also requires 72 hours written notice before a work stoppage.

On October 7, 1999, Thyer called a strike, pulled all Local 604 members off the job, and set up picket lines. Thyer alleged the reason for calling the strike was that Allied's terminal manager, Sam Bledsoe (Bledsoe), refused to meet with him earlier that day concerning a dispatch issue, in violation of the contractual grievance procedure. Trial testimony showed Bledsoe did not refuse to meet with Thyer, but instead requested that Thyer first make an appointment.

Trial evidence suggested an improper purpose motivated Local 604 to institute the October strike. In the month before the October strike, Lowery Gray (Gray), Local 604's union steward, was discharged for threatening to kill one of Allied-TSI's administrative employees. After procedural questions arose concerning Gray's termination, Allied-TSI rescinded the discharge and ordered a second discharge a day later for separate allegations of assault and destruction of company property. In discussing this matter with an Allied-TSI executive, Thyer threatened to shut Allied-TSI down if it took any action with respect to Gray. Gray was discharged [6] nonetheless on September 27. Local 604 filed a grievance on Gray's behalf and hired him as a business agent, allowing Gray continued access to the terminal.

On October 4, a hearing was held on Gray's dismissal in accordance with the NMATA provisions. On October 6, Allied-TSI obtained a restraining order preventing Gray from entering Allied-TSI's premises, but the order was promptly dissolved for lack of proper notice. On October 7, Thyer and Gray returned to the terminal and Thyer announced he was

shutting the terminal down and pulled all Allied-TSI employees off the job.

No provision under the NMATA authorized the October strike, nor did Local 604 provide the 72-hour written notice required by the NMATA. Allied-TSI sent written notice to Local 604 and IBT on October 7 of its willingness to meet, but received no response. After the strike began, Allied-TSI filed for injunctive relief against Local 604. Before the hearing on the motion for temporary restraining order, Local 604 agreed to terminate the strike without discussing the substance of the dispatch problem that had allegedly led to the strike.

The failur to provide Allied-TSI with the contractually required 72-hour advance notice of the strike damaged the company's operations. Allied-TSI was unable to schedule an alternative dispatcher, creating a backlog in automobiles needing to be transported. The backlog lasted for the remainder of the year and forced GM to divert vehicles away from the Wentzville terminal.

In December 1999, Allied-TSI obtained a new state court injunction barring Gray from entering the Wentzville terminal. Local 604 received a copy of the injunction on either December 20 or 21. On December 21, 1999, Local 604 established a picket line at the in-bound rail yard serviced by the Wentzville terminal. Local 604 notified Allied-TSI of the picketing in advance. The picketing continued for three days. Local 604 claimed this was permissible area standards picketing, protesting substandard wages and benefits against a third party, the St. Louis Auto Auction, which operated at the same terminal as Allied-TSI.

The picket line wa located where Allied-TSI employees were required to enter for work. Treating the picket line as a legitimate area standards picketing, Allied-TSI set up a

reserve gate where Allied-TSI employees could enter and exit without having to cross the picket line. The reserve [8] gate was created to allow Local 604 to picket St. Louis Auto Auction without interfering with the business of Allied-TSI. When asked to honor the reserve gate, Thyer stated that he would be "shutting the entire yard down." Local 604 then refused to honor the reserve gate and the entire Wentzville terminal was shut down. No Allied-TSI employees crossed the picket line to perform normal duties at the rail yard.

Allied-TSI sent letters to Local 604 and IBT requesting that the December work stoppage be terminated and inquiring whether it was an IBT authorized strike, but no response was received. Allied-TSI obtained a temporary restraining order on December 23, and a preliminary injunction on December 29, prohibiting Local 604 from engaging in the work stoppage in violation of the NMATA's mandatory grievance and arbitration provisions. Local 604 ended the strike. The district court ordered Local 604 and Allied-TSI to submit to arbitration.

Allied-TSI claims the December work stoppage significantly damaged business by increasing the severity of the already existing backlog from the October work stoppage, causing GM to divert more vehicles, and decreasing the efficiency of business generally. Allied-TSI sought damages sustained as a result of Local 604's breach of the NMATA and also requested a permanent injunction prohibiting Local 604 from engaging in further work stoppages, strikes, tie-ups, or picketing in violation of the NMATA. After a jury trial, the district court granted Allied-TSI's motion to dismiss its request for permanent injunctive relief on the ground of mootness.

At trial, Allied-TSI offered into evidence the temporary restraining order and preliminary injunction, which were partially read to the jury. Local 604 made no objection to this

admission of the orders. The union instead requested that the district court read the jury more of one order. Local 604's request was sustained and the full document was admitted into evidence.

Before trial, Allied-TSI filed a motion in limine to exclude from evidence all written decisions of all arbitrators. The district court deferred ruling on the motion, noting it was "unable at this time to determine whether the issues regarding the arbitrated disputes and grievances will be relevant," and it would "make rulings at the time such matters are presented." The court did prohibit any mention of the matters in voir dire and in opening statements. Local 604 made no attempt to offer into evidence the Board of Arbitration's decisions pursuant to the district court's December order that the parties submit to arbitration. Local 604 offered the Board of Arbitration's written decisions concerning Gray's termination, and Allied-TSI objected. The district court sustained the objection and excluded the arbitrators' decisions due to (1) the difference in opinion as to the meaning of the documents, (2) the likelihood the documents would "be confusing to the jury" and would force "the jury [to] interpret these legal documents," and (3) the risk a "series of mini-trials" could occur. The court allowed witness testimony as to Gray's violent proclivities, the state court restraining order enjoining Gray from entering the premises, and the general outcome of the arbitration.

The district court permitted Allied-TSI's internal accountant and Vice President of Internal Audit, Harpal Grover (Grover), to testify as a lay witness regarding Allied/TSI's damages. Grover was not present during the work stoppage, but testified as to his personal knowledge of the company's books and financial status.

A jury awarded $81,000 in damages to Allied-TSI on February 16, 2001. The district court denied Local 604's

motion for a new trial and denied Allied-TSI's motion for attorney fees.

II. DISCUSSION

We first address Local 604's contentions concerning the restraining order and preliminary injunction, then the evidentiary issues, and finally the damages award. We will conclude with Allied-TSI's motion for attorney fees.

A. Temporary Restraining Order and Preliminary Injunction

Local 604 delayed its appeal of the temporary restraining order and preliminary injunction until after the district court issued a final judgment, instead of bringing an interlocutory appeal as a matter of right. A party may choose to pursue an interlocutory appeal of a district court's grant of preliminary injunctive relief or to wait until after a final judgment has been rendered. *Sierra Club v. Robertson*, 28 F.3d 753, 756 n.3 (8th Cir. 1994).

Federal appellate jurisdiction extends only to actual cases or controversies still in existence at the time of appellate review. U.S. Const. art. III, § 2; *Ashley, Drew & N. Ry. Co. v. United Transp. Union*, 625 F.2d 1357, 1361 (8th Cir. 1980). After the district court enjoined the December 1999 work stoppage, GM transferred all of Allied-TSI's work at the Wentzville terminal to another carrier. Allied-TSI no longer does business with Local 604 at the Wentzville terminal. We need not explore the propriety of the temporary restraining order and preliminary injunction enjoining the December 1999 picketing because the issue has become moot "through the passage of time and the occurrence of irrevocable events." *Lebanon Chem. Corp. v. United Farmers Plant Food, Inc.*, 179 F.3d 1095, 1099 (8th Cir. 1999) (quoting McFarlin v. Newport Special Sch. Dist., 980 F.2d 1208, 1210 (8th Cir. 1992)).

B. Evidentiary Rulings

We will not set aside a jury verdict unless the district court clearly and prejudicially abused its discretion in determining whether or not to admit evidence. Lovett *v. Union Pac. R.R. Co.*, 201 F.3d 1074, 1080 (8th Cir. 2000).

Local 604 contends the temporary restraining order and preliminary injunction are not moot because Allied-TSI read portions of both documents to the jury, and the union believes this evidence prejudiced the rights of Local 604 and constituted plain error. However, Local 604 made no objection to the inclusion of this evidence at trial. Local 604 asked the district court to read more of one of the orders. The union also referred to this evidence throughout the trial. Local 604 had the opportunity to present the district court with a proposed jury instruction to clarify the meaning of these preliminary remedies—but did not.

Because of Local 604's failure to object to this evidence, we only review for plain error. *Chem-Trend, Inc. v. Newport Indus., Inc.*, 279 F.3d 625, 629 (8th Cir. 2002). Our review under the plain error standard is "narrow and confined to the exceptional case where error has seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* (citation omitted). We will only reverse if the error prejudiced the substantial rights of Local 604 and would result in a miscarriage of justice. *See id.* We find no miscarriage of justice and no plain error.

Local 604 also argues the district court abused its discretion in excluding from evidence two decisions issued by the Board of Arbitration in response to the district court's order requiring the parties to submit to arbitration. However, Local 604 never offered the decisions. The district court denied Allied-TSI's motion in limine to exclude this evidence, opting to "make rulings at the time such matters

were presented." Local 604's failure to offer the Board's decisions cannot be characterized as plain error on the part of the district court. *See Dupre v. Fru-Con Eng'g Inc.*, 112 F.3d 329, 337 (8th Cir. 1997).

After carefully scrutinizing the record, the only arbitration decisions we find Local 604 offered were documents relating to the dismissal of Gray. The district court correctly determined the admission of the arbitrators' decisions as to Gray would confuse the jury and waste time by focusing the jury's attention on irrelevant issues.

The district court denied Local 604's motion to exclude the statements concerning Gray's conduct and termination, which we review for a clear abuse of discretion. *See Spencer v. Stuart Hall Co.*, 173 F.3d 1124, 1130 (8th Cir. 1999). Local 604 argues evidence of Gray's threats of violence against Allied-TSI employees was not relevant evidence under Rules 401 and 402. Evidence of Gray's termination and Local 604's reaction to the termination is probative of the true reason for the October and December work stoppages. This evidence was relevant to assist the jury in determining whether the work stoppages were a breach of the NMATA. Accordingly, the district court did not abuse its discretion in admitting this evidence.

Local 604 contends it was also a clear abuse of discretion for the district court to permit Grover, the Vice President of Internal Audit at Allied-TSI, to testify as to damages under Rule 701 of the Federal Rules of Evidence. Grover had not been disclosed as an expert before trial. Local 604 argues Grover used accounting principles and methods to quantify damages, and therefore impermissibly used specialized knowledge, which can only be used by expert witnesses. Grover's testimony was limited to his firsthand knowledge, obtained as the bookkeeper and record-keeper at the Wentzville terminal and from a field audit he conducted

within weeks of the first work stoppage. "Personal knowledge or perception acquired through review of records prepared in the ordinary course of business, or perceptions based on industry experience is a sufficient foundation for lay opinion testimony." [16] *Burlington N. R.R. Co. v. Nebraska*, 802 F.2d 994, 1004-05 (8th Cir. 1986). The opinion testimony of an officer of a business as to value or projected profits or as to damage to the business, without qualifying the officer as an expert, "is admitted not because of experience, training or specialized knowledge within the realm of an expert, but because of the particularized knowledge that the witness has by virtue of his or her position in the business." Fed. R. Evid. 701, advisory committee's note (2000). We find no abuse of discretion in the district court's inclusion of Grover's testimony.

C. Damage Award

Local 604 also argues the damage award was excessive. We will reverse an award of damages only if it is "shocking, monstrous, or constituted a plain injustice." *Young v. City of Little Rock*, 249 F.3d 730, 736 (8th Cir. 2001) (citation omitted) (alteration in original). The jury's damage award of $81,000 against Local 604 was reasonable and rationally connected to evidence presented at trial. Allied-TSI presented evidence that the October work stoppage caused a backlog of vehicles which was then exacerbated by the December work stoppage. [17] Allied-TSI also put forth evidence of its attempts to mitigate damages by reducing the backlog. The award was not shocking, monstrous or a plain injustice.

D. Attorney Fees

We review the district court's denial of Allied-TSI's motion for attorney fees for an abuse of discretion. *American Fed'n of Musicians v. St. Louis Symphony*, 203 F.3d 1079, 1081 (8th Cir. 2000). Allied-TSI maintains the district court

abused its discretion in not awarding attorney fees as an element of damages, because Allied-TSI incurred legal costs in stopping the improper work stoppage and strike. Attorney fees are typically not recoverable as an element of damages in the absence of statutory authority, a contractual agreement to award attorney fees, or an equitable determination that a party acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Id.*; *see Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 24771, 44 L. Ed. 2d 141, 95 S. Ct. 1612 (1975). The Supreme Court has expressly rejected Allied-TSI's argument that it may recover attorney fees from prior litigation as an element of damages. *See Summit Valley Indus. Inc. v. Local* 112, United Bd. of Carpenters & Joiners of Am., 456 U.S. 717, 718-19 & n.1, 725-27, 72 L. Ed. 2d 511, 102 S. Ct. 2112 (1982) (expressly rejecting analysis of *Associated Gen. Contractors of Minn. v. Constr. & Gen. Laborers Local No.* 563, 612 F.2d 1060, 1061 (8th Cir. 1979), which characterized award of attorney fees from prior related lawsuit as compensatory damages). The district court did not abuse its discretion in denying Allied-TSI's motion for attorney fees.

III. CONCLUSION

The appeal of the temporary restraining order and preliminary injunction has become moot through the passage of time and the occurrence of irrevocable events. The district court did not abuse its discretion in ruling on the evidentiary matters or in refusing to award attorney fees. The damage award was reasonable. Accordingly, we affirm.

APPENDIX C

UNITED STATES DISTRICT COURT EASTERN DISTRICT FOR MISSOURI EASTERN DIVISION

Cast No. 4:99CV01589 ERW

ALLIED SYSTEMS, LTD., *et al.*,

Plaintiffs,

vs.

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFEURS, DEMONSTRATORS, and HELPERS LOCAL UNION No. 604, *et al.*,

Defendants.

TEMPORARY INJUNCTION

In accordance with the memorandum and Order of this Court, which was filed on this date and incorporated herein,

IT IS HEREBY ORDERED that Defendant Local Union No. 604 and all members and persons of Local union 604, specifically including those who are employed by Plaintiffs at their Wentzville, Missouri facilities shall be enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiffs in breach of the collective bargaining agreement between parties.

B. From concertedly refraining from performing their services at Plaintiffs' 655 Parr Road, Wentzville, Missouri terminal facilities and the yards serviced by said operation in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiffs' employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's aforementioned facilities or operations in support of any strike or work stoppage in breach of the collective bargaining agreement between the parties;

IT IS FURTHER ORDERED that the terms of this Injunction shall remain in effect until the parties have fully arbitrated the grievances filed by defendant Local Union and specified in Plaintiffs' Exhibit No. 6 with attachments, pursuant to the terms of the parties' collective bargaining agreement.

Dated this 29th day of December, 1999.

E. RICHARD WEBBER
E. Richard Webber
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OC MISSOURI
EASTERN DIVISION

Cast No. 4:99CV01589 ERW

ALLIED SYSTEMS, LTD., *et al.*,

Plaintiffs,

v.

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFEURS, DEMONSTRATORS, AND HELPERS LOCAL *Union* NO. 604, *et al.*,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court upon plaintiffs' request for a preliminary injunction [document #16]. Plaintiffs request that the Court enter an order retraining defendants from further picketing at the Norfolk and Southern in-bound rail facility. Defendants argue that such picketing is legal "information picketing," and that this Court may not grant an injunction prohibiting such conduct. Plaintiffs maintain that its members are engaged in area standards picketing upon the grounds where employees of the St. Louis Auto Auction are now performing work for substandard wages that formerly was conducted by defendants membership, and that the Court's Temporary Restraining Order entered on December 23, 1999, after a hearing should be dissolved. Plaintiffs assert that there are underlying issues that are arguably grievable encompassed within the contractual grievance procedure and that a preliminary injunction should be entered to permit the

parties to arbitrate their grievances and prevent defendants from engaging in activity at the rail yard, which is, in fact, not informational picketing, but rather work stoppage activity disguised as lawful activity, all in violation of the collective bargaining agreement.

In determining whether a party is entitled to a preliminary injunction, this Court is guided by the following factors set forth by the Eighth Circuit in *Dataphase Systems, Inc. v. SL Systems, Inc.*, 604 F. 2d 109, 114 (8th Cir. 1981): "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." In addition, the Court must also be mindful in a case of this nature of the established precedent regarding issuance of a preliminary injunction in cases involving relationships between management and unions. While Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, limits this Court's ability to enjoin strikes and work stoppages, Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides this Court with authority to enjoin such actions if necessary to ensure compliance with a provision in a collective bargaining agreement requiring that the parties arbitrate their grievances. *See generally Kansas City Southern Transport Co., Inc. v. Teamsters Local Union # 41*, 126 F. 3d 1059, 1064-65 (8th Cir. 1997) (citing, inter alia, *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) for the proposition that the Supreme Court has decided that "in order to accommodate the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of § 301(a) [of the Labor Management Relations Act] and the strong federal policy favoring arbitration, it was essential to recognize an exception to the anti-injunction provisions for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than to strike over them"). This

narrow exception for the issuance of a "*Boys Market*" injunction is consistent with the congressional policy in favor of the arbitration of labor disputes. *See generally Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960): *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

Allied Systems Ltd. v. Teamsters National Automobile Transporters Industry Negotiating Committee Local union 327, 179 F. 3d 982,988,989 (6th Cir. 1999), cited by defendants, recognized that a *Boys Markets* injunction is only to be granted when "it clearly appears to the trial judge that the dispute which underlies the strike is subject to a no-strike obligation [internal citations omitted]." The facts of the case are otherwise distinguishable. That case concluded properly in its holding under the facts of the case, that a *Boys Markets*, injunction is proper only when a clear and undisputed contractual duty exists to arbitrate the dispute. Here, there is a no-strike clause in the collective bargaining agreement and there is a clear and undisputed duty to arbitrate the underlying dispute(s).

In *Kansas City Southern Transport Co., Inc., v. Teamsters Local Union #41*, the Eighth Circuit addressed this aspect of the *Boys Markets* issue as follows:

> Under the *Boys Markets* exception, a District Court entertaining an action under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, may not grant injunctive relief against concerned activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the

> contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether the issuance of an injunction would be warranted under the ordinary principles of equity-whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. The Supreme Court further refined the *Boys Market exception in Buffalo Forge Co. v. United Steelworkers of Am. AFL-CIO*, 428 U.S. 397, 406, 96 S. Ct. 3141, 3147, L.Ed.2d 1022 (1976), and held that it applies only where the underlying dispute, that which precipitated the strike, is subject to binding arbitration under the collective bargaining agreement.

126 F.3d 1059, 1064 (8th Cir. 1997) (internal citations and brackets omitted).

For these reasons, the Court is faced with determining whether defendants' picketing activities in this matter are concerned with matters that are subject to the grievance machinery within the parties' collective bargaining agreement. Plaintiffs have argued that the picketing by defendants in this matter, which defendants claim is aimed at a third-party, the St. Louis Auto Auction, concerns matters subject to arbitration pursuant to Section 33 of the collective bargaining agreement between the parties. However, the court does not find that Section 33 could govern defendants' "informational picketing" against a third-party, because that Section clearly prohibits the employer from engaging in "contracting and double breasting practices under which Employer permits persons other than Employer's bargaining unit employees to perform Carhaul Work . . . ." The

uncontradicted testimony throughout the hearing in this matter established that the third-party subject to picketing from defendants is not an arm of plaintiffs, and that plaintiffs are not engaging in "double breasting practices" through the third-party.

Having reached this conclusion does not end the matter, however, for the court finds from the evidence that defendants' picketing in this matter was, in reality, not "informational picketing" as represented in their papers and a the hearings in this matter, but instead, an orchestrated plan to stop work at the rail yard. Defendants' Exhibits F and G are letters written by Daniel Sandy on December 23, 1999. One is directed to John Thyer, Secretary-Treasurer and Business Representative of defendant Automobile Transport Chauffeurs, Demonstrators and Helpers Teamsters Local 604 who has authority to call a strike. Mr. Sandy's letter states, "[O]n December 22, 1999 at approximately 3:00 p.m. Mr. Dan Sandy, Assistant Vice President of Industrial Relations for Allied systems, Ltd. informed Mr. Manion [president of Local 604] and yourself that the main gate of the facility was restricted to Allied Systems, Ltd. and Transport Support, Inc. employees only. He was informed by your and Mr. Manion that 'you were shutting the entire yard down.'" Exhibit G, addressed to Mr. Doc Conder, Local Union 41, has similar language. Mr. Thyer, who testified at the Hearing on December 23, 1999 and at the Hearing on December 28, 1999, did not deny the allegations. At the Hearing on December 23, 1999 he testified that the informational picket was set up at a location away form the entrance gate to the rail yard, but that he considered it a picket line at the gate, and as drivers came by the picket area, asking questions, their inquiries were answered and drivers would not enter the yard. Defendants' counsel noted, "these parties don't get along too well, and it's not all the union's fault. In fact, what Mr. Thyer's testimony is that frankly the mend are darn peeved and they've always been peeved."

Plaintiffs cite the Court to *Westmoreland Coal Co., Inc. v. International Union, United Mine Workers of America*, 910 F.2d 130, 138 (4th Cir. 1990) which noted that pickets used for the "purpose of disguising the true nature" of a work stoppage may be evidence that not only supports a finding that a Union may be violating its obligation to arbitrate disputes pursuant to a collective bargaining agreement, but that the Union is aware that such picketing, when stripped of its disguise, would violate the collective bargaining agreement. The Court believes that the evidence indicates that that is the case in this matter. Defendants have expressed dissatisfaction in the part over grievances that the parties have resolved either through settlement or otherwise through the grievance procedure. This dissatisfaction was readily apparent through the lengthy testimony of Mr. Thyer, the only person who claims to be able to call for a strike or work stoppage on behalf of defendant Union. In regards to one of the grievances, defendants claim that plaintiffs owe liquidated damages in addition to damages already paid by plaintiffs. In addition, the defendant Union has attempted to pursue a grievance on behalf of Lowery Gray, a former Union steward who was terminated by plaintiffs. The work stoppages in this matter came shortly after entry of a court order from a state court prohibiting Mr. Gray from coming near plaintiffs' premises because of threats made to personnel on the premises.

As noted, the court has concluded that Mr. Thyer's testimony in regards to the "informational picketing" in this matter indicated that it is not limited to such picketing directed at a third-party. He testified that the picketing was taking place at an area near an entrance for employees of plaintiffs. Employees of plaintiffs who approached the picket line refused to cross it. While Mr. Thyer denied that the Union was stopping such employees from actually entering the premises, the Court finds his testimony lacking in credibility. Throughout the hearing the Court did not find

any evidence indicating that any employee of plaintiffs entered the premises while the picketing was ongoing. Instead, the Court finds that the evidence establishes that the picketing in this matter was designed to place economic pressure on plaintiffs for plaintiffs' actions in regards to past grievances, settlements, and a personnel decision.

Concluding, the Court is convinced from hearing the testimony adduced at the hearings in this matter that the alleged "informational picketing" in this matter is merely a disguise for defendants' picketing of plaintiffs for actions allegedly taken by plaintiffs that are subject to the grievance procedure provided in the parties' collective bargaining agreement.

The next issue is whether the court may grant prospective injunctive relief. *Westmoreland Coal Company* is instructive concerning the approaches various circuits have taken in addressing that proposition. That court's conclusion, well-reasoned, is "[t]hus, if a future breach is threatened, prospective relief is appropriate. We are not inclined to restrict the authority of district courts to grant the equitable relief of narrowly tailored prospective injunctions in situations where there is a reasonable probability that future breaches will be committed, even in situations when on pattern emerged."" *Id.* at 138. Here, the action of defendants constitutes a pattern of behavior of initiating work stoppage actions rather than complying with the clear language of the collective bargaining agreement to arbitrate grievances. Plaintiffs were here in October seeking relief, which the parties resolved after appearing for a hearing. Granting of prospective equitable relief is appropriate in this case.

The Courts finds that the work stoppage arose over arbitrable disputes not framed in the exchange of correspondence between the parties on December 27, 1999; as set forth in plaintiffs' Exhibit 6, and that those grievances are the underlying disputes which caused the work stoppage.

Notwithstanding the Norris-LaGuardia Act, injunctive relief under *Boys Markets* in this case is appropriate. The work stoppage action of defendants is, in fact, over grievances both parties are contractually bound to arbitrate and plaintiffs are ordered to arbitrate all issues, including case no. 51, as a condition of obtaining an injunction.

The Court further finds that plaintiffs are threatened with irreparable harm by defendants. Plaintiffs are threatened with the likelihood of losing its contract with General Motors, or of having those contract benefits substantially curtailed at this and other plants if defendants are permitted t continue the work stoppage activity. In balancing the relative harm between the parties, clearly the harm to plaintiffs is very substantial, while the harm to defendants is minimal. One of defendant's complaints is that they have been unable to get key issues resolved because plaintiffs will not expeditiously arbitrate grievances. Under the Court's order, expeditious arbitration shall occur at the national level as stipulated by plaintiffs.[1] The Court further finds that there is a high probability that movant will succeed on the merits, and that the public interest will be served if equitable relief is granted to plaintiffs. *See Dataphase Systems, Inc.*, 640 F.2d at 114.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' request for a preliminary injunction [Document #16] is GRANTED.

---

[1] Plaintiffs do not agree to arbitrate case no. 51; however, the Court orders that case and the other cases hereinbefore referenced be arbitrated. *See Kansas City Southern Transport Company, Inc.*, 126 F.3d at 1064 (whether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court).

An appropriate Injunction shall accompany this Memorandum and Order.

Dated this 29th day of December, 1999.

/s/ E. Richard Webber
E. Richard WEBBER
United States District Judge

APPENDIX E

29 U.S.C. § 104

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

APPENDIX F

29 U.S.C. § 157

§ 157. Rights of employees as to organization, collective bargaining, etc.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [29 USCS § 158].

APPENDIX G

29 U.S.C. § 185

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Supreme Court, U.S.
FILED
FEB 13 2003
CLERK

No. 02-1078

IN THE
SUPREME COURT OF THE UNITED STATES

TEAMSTERS AUTOMOBILE TRANSPORT
CHAUFFEURS, DEMONSTRATORS, and HELPERS
LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and
TRANSPORT SUPPORT, INC.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

ROBERT L. MERCADO*
DEAN & FULKERSON, P.C.
801 West Big Beaver Rd.
Fifth Floor
Troy, Michigan 48084
(248) 362-1300
*Counsel of Record
Attorneys for Respondents

21 pp

QUESTION PRESENTED

In Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970), this Court held that Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 authorized a trial court to enjoin a work stoppage in violation of a contractual no-strike clause notwithstanding the anti-injunction provision of the Norris-LaGuardia Act, 29 U.S.C. §104. The question presented by this case is whether the Eighth Circuit Court of Appeals correctly found that Petitioner's work stoppage in December 1999 was enjoinable under the principles enunciated in Boys Market, and, therefore, affirmed the District Court's grant of injunctive relief.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner's description of Respondents in its petition is not completely accurate.

Respondent Allied Systems, LTD is a Georgia limited partnership. Respondent Transport Support, Inc. is a Delaware corporation. Both Respondents are wholly-owned subsidiaries of Allied Automotive Group, Inc. Allied Automotive Group, Inc. is a wholly-owned subsidiary of Allied Holdings, Inc., a publically held corporation (trading symbol "AHI").

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES ..... v, vi

OPINION BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 3

REASONS FOR DENYING THE PETITION 5

1. THE DISTRICT COURT WAS AUTHORIZED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. §185 AND THIS COURT'S DECISION IN BOYS MARKET, INC. v. RETAIL CLERKS UNION, LOCAL 770, 398 U.S. 235 (1970), TO ENJOIN PETITIONER'S DECEMBER 1999 WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENT 5

2. THERE IS NO MERIT TO PETITIONER'S CONTENTION THAT THIS COURT'S DECISION IN BOYS MARKET DID NOT APPLY TO THE DECEMBER 1999 WORK STOPPAGE, THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN RELYING UPON BOYS MARKET, OR THAT THE COURT ERRED BY SHIFTING THE BURDEN OF PROOF TO PETITIONER. 8

3. PETITIONER'S CONTENTION THAT THE DISTRICT COURT ERRED BY READING EXCERPTS FROM THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO THE JURY IS WITHOUT MERIT SINCE THE UNION ALSO ASKED THE COURT TO READ PORTIONS OF THE INJUNCTIVE ORDERS TO THE JURY, REQUESTED THAT THE ENTIRE DOCUMENTS BE MADE EXHIBITS, AND DID NOT RAISE THE ALLEGED ERROR AT TRIAL ... 11

4. PETITIONER'S ASSERTION THAT THE COURT OF APPEALS ERRED BY FINDING THAT THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WERE MOOT IS WITHOUT MERIT 12

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Allied Systems, LTD. v. Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers, Local 604, 304 F.3d 785 (8th Cir. 2002) 2, 3

Ashley, Drew and N. Ry. Co. v. United Transp. Union, 625 F.2d 1357 (8th Cir. 1980) 12

Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 90 S. Ct. 1583, 26 L. Ed. 2d 199 (1970) ..... i, 3, 5, 6, 7, 8

Lebanon Chemical Corporation v. United Farmers Plant Food, Inc.,179 F.3d 1095 (8th Cir. 1999), *reh'g. en banc denied*, 1999 U.S. App. LEXIS 17025 (8th Cir. 1999), *cert. denied*, 528 U.S. 1079 (2000) 13

Sierra Club v. Robertson, 28 F.3d 753 (8th Cir. 1994), *reh'g. en banc denied*, 1994 U.S. App. LEXIS 20154 (8th Cir. 1994) 12

Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972 (1957) 6

United Steelworkers v. American Manufacturing Company, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960) ... 7

United Steelworkers v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960) 7

United Steelworkers v. Warrior and Gulf Navigation Company, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960) 7

Westmoreland Coal Company, Inc. v. International Union, United Mine Workers of America, 910 F.2d 130 (4th Cir. 1990) 9

CONSTITUTION

U.S. Const. art. III, § 2 12

STATUTES

28 U.S.C. §1254(1) 3

29 U.S.C. §104 ..... i, 5

29 U.S.C. §185, Section 301 of the Labor Management Relations Act ..... i, 5, 8

No. 02-1078

IN THE
SUPREME COURT OF THE UNITED STATES

TEAMSTERS AUTOMOBILE TRANSPORT
CHAUFFEURS, DEMONSTRATORS, and HELPERS
LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and
TRANSPORT SUPPORT, INC.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF IN OPPOSITION

Respondents Allied Systems, LTD. and Transport Support, Inc. respectfully pray that Petitioner Teamsters Automobile Transport, Chauffeurs, Demonstrators, and

Helpers Local Union No. 604's January 15, 2003 Petition for Writ of Certiorari seeking review of a final order and judgment entered September 17, 2002 and order denying petition for panel rehearing entered October 17, 2002 by the United States Court of Appeals for the Eighth Circuit be denied.

OPINION BELOW

The decision sought to be reviewed has been reported as Allied Systems, LTD. v. Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers, Local 604, 304 F.3d 785 (8th Cir. 2002) and is accurately reprinted in Appendix B of Petitioner's Petition. The order of the Court of Appeals denying the petition for panel rehearing is accurately reprinted in Appendix A of Petitioner's Petition.

JURISDICTION

Respondents agree with Petitioner that all jurisdictional requisites have been complied with for review

of this matter pursuant to 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Respondents rely upon the facts set forth in the Court of Appeals' opinion in Allied Systems, LTD v. Teamsters Automobile Transport, Chauffeurs, Demonstrators and Helpers, Local 604, 304 F.3d at 787-790 and in the memorandum and order of the United States District Court for the Eastern District of Missouri, Eastern Division, (Appendix D, pp. 15a-22a). Respondents respectfully state that the facts as found by the District Court and the Court of Appeals that Petitioner engaged in a work stoppage over arbitrable issues in violation of the no-strike clause contained in the parties' collective bargaining agreement warranted the grant of the temporary restraining order and preliminary injunction issued by the District Court under the principles enunciated by this Court in Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970). The decision

of the Court of Appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. The facts in this case further support the jury's award of damages arising from the work stoppages.

Because Petitioner was found to have engaged in work stoppages over arbitrable issues in violation of the labor contract's no-strike clause, its Petition should not be granted. Denial of the Petition is further warranted since it does not involve an important federal question over which there is a conflict between the court of appeals and any state court of last resort; it does not entail an important question of federal law that has not been, but should be, settled by the Court; and it does not involve a claim that the Court of Appeals' decision represents such a departure from accepted and usual judicial proceedings as to call for the Court's exercise of its supervisory power.

REASONS FOR DENYING THE PETITION

1. THE DISTRICT COURT WAS AUTHORIZED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. §185 AND THIS COURT'S DECISION IN BOYS MARKET, INC. v. RETAIL CLERKS UNION, LOCAL 770, 398 U.S. 235 (1970), TO ENJOIN PETITIONER'S DECEMBER 1999 WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.

Petitioner contends that the District Court lacked jurisdiction to issue a temporary restraining order and preliminary injunction because Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, prohibits the grant of injunctive relief. This argument is without merit. The District Court granted Respondents' request for a temporary restraining order and preliminary injunction, following two (2) evidentiary hearings, based on its finding that Petitioner had engaged in a work stoppage over arbitrable issues in violation of the no-strike clause contained in the parties'

collective bargaining agreement. It is well settled that the grant of injunctive relief, where a union has engaged in a work stoppage over matters subject to final and binding arbitration and in contravention of a no-strike clause, is not prohibited by Section 4 of the Norris-LaGuardia Act.

In Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970), this Court created an exception to the anti-injunction provisions of the Norris-LaGuardia Act in order to accommodate the provisions of Section 301 of the Labor Management Relations Act. In Boys Market, this Court held that the strong federal policy favoring arbitration required an exception to the anti-injunction provisions when the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than strike over them. The narrow exception created by Boys Market is consistent with the congressional policy in favor of arbitration of labor disputes. Textile Workers Union v. Lincoln Mills, 353 U.S.

448 (1957); United Steelworkers v. Warrior and Gulf Navigation Company, 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel and Car Corporation, 363 U.S. 593 (1960) and United Steelworkers v. American Manufacturing Company, 363 U.S. 564 (1960).

In granting the temporary restraining order and preliminary injunction, the District Court found that Petitioner's activities in December 1999 were in violation of the contractual no-strike clause; that the violation was precipitated by a dispute subject to the mandatory arbitration procedures, which the parties were ordered to arbitrate, and that an injunction was otherwise warranted under the ordinary principles of equity. This is the very analysis that this Court mandated in Boys Market. Therefore, the District Court's decision, affirmed by the Court of Appeals, was correct and not in conflict with any decision of this Court or any other court of appeals.

2. THERE IS NO MERIT TO PETITIONER'S CONTENTION THAT THIS COURT'S DECISION IN BOYS MARKET DID NOT APPLY TO THE DECEMBER 1999 WORK STOPPAGE, THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN RELYING UPON BOYS MARKET, OR THAT THE COURT ERRED BY SHIFTING THE BURDEN OF PROOF TO PETITIONER.

Petitioner's contention that this Court's decision in Boys Market, *supra,* did not apply to this case or that the District Court abused its discretion in applying Boys Market is totally without merit. Respondents' cause of action against Petitioner was brought under Section 301 of the Labor Management Relations Act, *supra*. Boys Market is based on Section 301. The Petitioner did not contest the District Court's jurisdiction under Section 301. The District Court found, consistent with Boys Market, that there was an underlying collective bargaining agreement; that the collective bargaining agreement contained a no-strike clause; that the collective bargaining agreement contained a

mandatory grievance and arbitration procedure; and that the Petitioner had engaged in a work stoppage over grievable disputes subject to arbitration. The Petitioner argued both to the District Court and jury that its actions did not contravene the contractual no-strike prohibition because it was engaged in purported area standards picketing. Both the District Court and jury rejected Petitioner's argument since the evidence established that, contrary to Petitioner's contention, its true motivation for picketing was over grievable issues. In granting the temporary restraining order and preliminary injunction, the District Court relied upon Westmoreland Coal Company, Inc. v. International Union, United Mine Workers of America, 910 F.2d 130, 138 (4th Cir. 1990), which held that where pickets are used for the "purpose of disguising the true nature" of a work stoppage, such evidence supports not only a finding that the union violated its obligation to arbitrate disputes pursuant to the collective bargaining agreement, but

that the union was aware that such picketing, when stripped of its disguise, would violate the collective bargaining agreement. That is exactly the evidence adduced at the evidentiary hearings and at the trial in this case. The District Court, the jury and the Court of Appeals rejected Petitioner's argument that Petitioner was simply engaged in area standards picketing and were persuaded that the evidence established that Petitioner's true motive for the work stoppage was over grievable issues.

With respect to Petitioner's contention that the District Court improperly placed the burden of proof on Petitioner, this argument is clearly rebutted by a cursory review of the District Court's Memorandum and Order which confirms that it was the Respondents that were required to satisfy the necessary criteria mandated by this Court under Boys Market in order to obtain the injunctive relief (Appendix D, pp. 16a-22a).

3. PETITIONER'S CONTENTION THAT THE DISTRICT COURT ERRED BY READING EXCERPTS FROM THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO THE JURY IS WITHOUT MERIT SINCE THE UNION ALSO ASKED THE COURT TO READ PORTIONS OF THE INJUNCTIVE ORDERS TO THE JURY, REQUESTED THAT THE ENTIRE DOCUMENTS BE MADE EXHIBITS, AND DID NOT RAISE THE ALLEGED ERROR AT TRIAL.

Petitioner argues that the District Court erred by reading to the jury excerpts from the temporary restraining order and preliminary injunction. This argument is without merit. The Court of Appeals found that Petitioner made no objection to the admission of the orders at trial, requested that the District Court read to the jury additional portions of one of the injunctive orders, and further requested that the orders be admitted into evidence. (Appendix B, pp. 6a-7a). In light of the Court of Appeals' specific findings, there is absolutely no merit to Petitioner's contention that its belated objection

is grounds for vacating the jury award.

4. PETITIONER'S ASSERTION THAT THE COURT OF APPEALS ERRED BY FINDING THAT THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WERE MOOT IS WITHOUT MERIT.

The decision of the Court of Appeals is correct and does not conflict with any decision of this Court or any other court of appeals with respect to the issue of mootness. The Court of Appeals held that Petitioner had the option of taking an interlocutory appeal of the District Court's grant of preliminary injunctive relief or waiting until after a final judgment had been rendered. Sierra Club v. Robertson, 28 F.3d 753, 756 n. 3 (8th Cir. 1994). Petitioner elected to wait until after final judgment had been rendered. The Court of Appeals noted that federal appellate jurisdiction extends only to actual cases or controversies still in existence at the time of appellate review, citing the United States Constitution, Article III, Section 2 and Ashley, Drew and N. Ry. Co. v. United

Transp. Union, 625 F.2d 1357, 1361 (8th Cir. 1980). The Court of Appeals also relied upon Lebanon Chemical Corporation v. United Farmers Plant Food, Inc., 179 F.3d 1095, 1099 (8th Cir. 1999), for the principle that the propriety of a temporary restraining order and preliminary injunction may become moot through the passage of time.

Respondents' request for a permanent injunction became moot when approximately two (2) months after the trial and jury award, Respondents lost the General Motors business at Wentzville, Missouri. Therefore, there was no actual case or controversy with respect to the equitable relief in existence at the time of appellate review.

With respect to Petitioner's contention that the mootness doctrine should not be applied because Petitioner was prejudiced by the reading of the temporary restraining order and preliminary injunction to the jury, this argument is foreclosed by the fact that Petitioner did not object at trial,

Petitioner asked the District Court to read additional excerpts from one of the injunctive orders to the jury, and moved for the admission into evidence of the injunctive orders as found by the Court of Appeals (Appendix B, pp. 6a-7a). In light of these facts, Petitioner's argument, that it was prejudiced, lacks merit.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DEAN & FULKERSON, P.C.

By:_____

Robert L. Mercado
Counsel of Record
801 West Big Beaver Road
Fifth Floor
Troy, Michigan 48084
(248) 362-1300

Attorneys for Respondents
Allied Systems, LTD. and
Transport Support, Inc.

Dated: February 13, 2003